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In the Supreme Court of the United States

OCTOBER TERM, 1978

ANDREW P. HART AND KIRBY LUMBER CORPORATION,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General

JAMES W. MOORMAN
Assistant Attorney General

CARL STRASS
ANNE S. ALMY
Attorneys
Department of Justice
Washington, D.C. 20530

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 29-37) is reported at 585 F.2d 1280. The findings of fact and conclusions of law of the district court (Pet. App. 39-49) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 11, 1978. A petition for rehearing was denied on January 11, 1979 (Pet. App. 38). The

petition for a writ of certiorari was filed on April 9, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

28 U.S.C. 2409a(f) provides:

> Any civil action under this section shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

QUESTION PRESENTED

Whether the 12-year limitations period on actions filed against the United States under the Quiet Title Act, 28 U.S.C. 2409a(f), bars an action commenced 14 years after the plaintiff conveyed the land to the United States.

STATEMENT

1. On March 28, 1961, the Kirby Lumber Corporation executed a general warranty deed conveying over 2,000 acres to the United States. The government acquired the land for use in connection with the Sam Rayburn Reservoir and Dam, an Army Corps of Engineers project on the Angelina River in Texas.[1]

[1] The project was originally known as the McGee Bend Reservoir and Dam project. It was authorized by the Act of March 2, 1945, ch. 19, 59 Stat. 10. The name was changed by the Act of September 11, 1963, Pub. L. No. 88-123, 77 Stat. 155.

The deed to the land was obtained by the United States through negotiated purchase rather than condemnation.

In 1958, the Corps of Engineers had announced that land for this project would be acquired in fee from the reservoir floor to approximately the 171-foot mean sea level contour and that flowage easements would be obtained for higher land to approximately the 179-foot contour.[2] As an exception to this policy, however, the Corps proposed to acquire fee title for land to approximately the 179-foot contour in areas where erosion above the 171-foot contour was predicted.

The Corps of Engineers determined that the land covered by the Kirby deed was in such an erosion-prone area. Accordingly, in November 1960, they explained to Kirby that they desired to acquire the land between the 171-foot and 179-foot contours. A tract description document was furnished to Kirby which detailed both the acreage to be acquired and the metes and bounds of the proposed boundary line. In June 1960, Kirby checked the proposed boundary

[2] This was based on the Joint Policy for Land Acquisition on Reservoir Projects: Department of the Interior—Department of the Army, 19 Fed. Reg. 381 (1954) (Eisenhower Policy) (Pet. App. 60-63). Under this policy, fee title is acquired for land expected to be inundated by flood waters on an average of once every five years. For the Rayburn project, the five year flood elevation was determined to be 171-feet. The 179-foot contour was determined to be the elevation subjected to inundation once every fifty years.

markers and, after some negotiation, accepted the government appraisal as the purchase price.

The warranty deed conveying the land to the United States repeated the metes and bounds from the tract description. Neither the deed nor the sale contract made any reference to a contour line or elevation. There is no contention that the acreage conveyed differed from the tract description or that the boundary line created by the instruments is ambiguous.

2. On February 28, 1973, Kirby conveyed approximately 13 acres adjacent to the project to petitioner Hart. The deed contained the metes and bounds description of the boundary line from the prior conveyance to the United States. Thereafter, Hart had the property surveyed and found that the deed line in the conveyance to the United States diverged from the 179-foot contour so that it enclosed land of higher elevations. He sought an adjustment of this boundary line, which was refused by the Corps on the ground that the area was potentially subject to erosion.

This suit was then filed on March 28, 1975. The complaint asked the court to reform the deed to the United States by replacing the metes and bounds of the conveyance with a description conveying lands only to the 171-foot contour. In effect, petitioners sought to divest the government of approximately 93 acres above the 171-foot contour line.

Following a bench trial, the district court rejected the government's motions to dismiss the action for failure to state a claim, failure of subject matter

jurisdiction and failure to comply with the 12-year statute of limitations for actions brought against the United States to quiet title under 28 U.S.C. 2409a(f). The court accepted petitioner's claims and reformed the deed to convey to the United States the land to the 171-foot contour in fee, and a flow easement for the land to the 179-foot contour (Pet. App. 39-49).

The court of appeals reversed, holding that the 12-year statute of limitations in 28 U.S.C. 2409a(f) had expired before this suit was filed. The court remanded the case to the district court with directions to dismiss (Pet. App. 29-37).

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of the other courts of appeals. Further review of the decision in this case is therefore not warranted.

The Quiet Title Act grants consent to suit to actions involving disputed title to real property in which the United States claims an interest. 28 U.S.C. 2409(a). The Act, however, limits the consent to actions filed within 12 years of the date on which the plaintiffs knew or should have known of the claim of the United States.[3] 28 U.S.C. 2409a(f). It is the

[3] The statute provides that "[a]ny civil action under this section *shall be barred* unless it is commenced within twelve years of the date upon which it accrued." 28 U.S.C. 2409a(f) (emphasis supplied). Prior to enactment, the limitations section of the Quiet Title Act was the subject of extensive congressional attention. The length of the limitations period, provision for retrospective application, and the definition of the accrual of a cause of action were considered and redrafted

settled rule that "[s]uits against the United States can be maintained only by permission, in the manner prescribed and subject to the restrictions imposed." *Munro* v. *United States*, 303 U.S. 36, 41 (1938); *Reid* v. *United States*, 211 U.S. 529, 538 (1909) (Holmes, J.). Moreover, conditions or limitations to a consent to suit are to be interpreted strictly in favor of the sovereign.[4] *McMahon* v. *United States*, 342 U.S. 25, 27 (1951); see *United States* v. *Testan*, 424 U.S. 392, 399 (1976); *United States* v. *Sherwood*,

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several times before the legislation was finalized. See S. Rep. No. 92-575, 92d Cong., 1st Sess. 2-3, 8 (1971); H.R. Rep. No. 92-1559, 92d Cong., 2d Sess. 5 (1972). See *Hatter* v. *United States*, 402 F. Supp. 1192, 1194 (E.D. Cal. 1975). The 12-year limitations period was designed to provide a fair opportunity to litigate title claims against the United States.

[4] Petitioners contend (Pet. 10-17) that the enactment of the 1976 amendments to the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*, reversed the rule that waivers of sovereign immunity are to be strictly construed. These amendments, however, were concerned with actions subject to the judicial review provisions of the APA. S. Rep. No. 94-996, 94th Cong., 2d Sess. 2 (1976); H.R. Rep. No. 94-1656, 94th Cong., 2d Sess. 3 (1976). Congress intended the waiver of sovereign immunity in the 1976 amendments to have no effect on the requirements and limitations on previously enacted consents to suit. S. Rep. No. 94-996, *supra*, at 12, 26; H.R. Rep. No. 94-1656, *supra*, at 12-13. Thus, the amendment to Section 10(a) of the APA provides, "[n]othing herein * * * confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." Act of October 21, 1976, Pub. L. No. 94-574, Section 1, 90 Stat. 2721, 5 U.S.C. 702. Since the relief sought by petitioners is forbidden by the Quiet Title Act, 28 U.S.C. 2409a(f), the 1976 amendments on which petitioners rely are not relevant.

312 U.S. 584, 586 (1941). Because petitioner Kirby did not file this action until 14 years after it conveyed the land to the United States, the court of appeals correctly concluded that the claim is time-barred by the statute.

Petitioners contend (Pet. 24-25), however, that the claim of the United States is not based on the metes and bounds established in the 1961 deed, but is based instead on the 179-foot contour line around the dam project. Petitioners claim that they could not reasonably have known that the 1961 deed conveyed land above the 179-foot contour line before the land was surveyed in 1973 and that, since this lawsuit was filed only two years after that survey, it is not barred by the 12-year statute of limitations in 28 U.S.C. 2409a(f). But it is obvious that the claim of the United States to this land is based on the metes and bounds description of the 1961 deed, which does not incorporate or in any way refer to the 179-foot contour line. The very purpose of employing a metes and bounds description, rather than a contour line, in such a conveyance is presumably to avoid subsequent confusion and disputes as to the precise location of the land claimed by the United States. Petitioners cannot now urge that the unambiguous claim established by the United States in the 1961 deed on the basis of precise metes and bounds is, in fact, only a shorthand reference to an ambiguous contour line that was not incorporated into the deed. Cf. *Grosz* v. *Andrus*, 556 F.2d 972, 974-975 (9th Cir. 1977).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

JAMES W. MOORMAN
Assistant Attorney General

CARL STRASS
ANNE S. ALMY
Attorneys

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